

Montano, J

On November 16, 2018 this Court, consisting of the Honorable Michael P. Sherlock, the Honorable W.G. Edmanson II, and the Honorable Alexander J. Montano acting as a special court pursuant to 25 *Del C.* § 5717 (a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Robert L. Coleman (“Plaintiff”), against Lisa Satterfield (“Defendant”). At the conclusion of trial, the Court reserved its decision. For the following reason the Court enters judgement in-part for the Plaintiff.

BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on September 14, 2018 seeking unpaid rent, court costs, post judgment interest, and possession of the rental unit located at 9 Wayne Drive Dover, Delaware. Trial was held on October 8, 2018 and a judgment was entered in favor of the Plaintiff.³ The Defendant filed a timely appeal on October 12, 2018 and a trial *de novo* was held.

TESTIMONY OF PARTIES & WITNESSES

Plaintiff testified that on February 1, 2017 both parties entered into a lease agreement for the Defendant to rent the unit. The Delaware State Housing Authority (DSHA), acting as the Public Housing Authority (PHA), managed the Housing and Urban Development (HUD) assistance Choice Voucher Program for the Defendant to receive rent assistance. The Defendant’s monthly rent was \$1,100.00; the HUD voucher assistance paid \$633.00 and the Defendant was responsible for the remaining \$467.00. On February 1, 2018, DSHA terminated the Defendant’s HUD voucher assistance. The Defendant, however, chose to remain in the unit. Plaintiff testified he was unable to get the Defendant to sign a new lease agreement and, therefore, felt forced to accept \$467.00 per month as rent.

¹ 25 *Del C.* § 5717 (a). *Nonjury trials.* With regards to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote.

² *De Novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. *Black’s Law Dictionary* 300 (6th ed. 1991).

³ *R. Coleman v. L. Satterfield*, Del. J.P., C.A. No. JP16-18-006238, Wilson, J. (Oct. 8, 2018).

Unfortunately, the Defendant failed to pay “her portion” of the rent for May 2018 and June 2018. Therefore, on June 8, 2018 the Plaintiff served the Defendant with a late rent (demand notice)⁴ to cure not later than (NLT) June 20, 2018.⁵ Then on June 19, 2018, the Plaintiff served the Defendant with a 60-notice to vacate by August 31, 2018. As of this date the Defendant has refused to vacate the unit.⁶ During this time, the Defendant has failed to pay all rents due. She has paid rent for June and September; the following is the Plaintiff’s current account for the rent due:

- May 2018: \$467.00 rent due
- June 2018: \$467.00 rent **paid**
- July 2018: \$467.00 rent due
- Aug 2018: \$467.00 rent due
- Sep 2018: \$467.00 rent **paid**
- Oct 2018: \$633.00 rent **balance due**

The Plaintiff explained the October 2018 late rent notice⁷ shows a rent increase from \$467.00 to \$1,100.00 but the Defendant only paid \$467.00 October and still owes \$633.00 for that month. The Plaintiff asserted he is due a total of \$4,755.40 in past due rent. The Plaintiff also expressed he has tried to help the Defendant by sending DSHA a letter asking them to continue providing the Defendant with assistance for rent.⁸ Unfortunately, DSHA has already informed the Defendant they would only grant her a 60-day HUD voucher extension beginning February 1, 2018 if she contacts DSHA, but as of June 5, 2018 the Defendant has not done so. The Plaintiff submitted the following Plaintiff’s exhibits (Pl. E.) into evidence without legal objection from the Defendant:

Pl. E #1: Late Rent Notice for May and June 2018, signed and dated June 8, 2018

Pl. E #2: Notice to Terminate Tenancy, signed and dated June 19, 2018.

Pl. E #3: DSHA’s Notice to Plaintiff limitation of housing assistance for the Defendant, dated June 5, 2018.

⁴ 25 Del C. § 5502 (a) **Landlord remedies for failure to pay rent.** A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing [emphasis added] that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

⁵ Pl. E. #1: Late Rent Notice for May and June 2018, signed and dated June 8, 2018

⁶ Pl. E #2: Notice to Terminate Tenancy, signed and dated June 19, 2018.

⁷ Pl. E #4: Late Rent Notice for October 2018, signed and dated October 16, 2018.

⁸ Pl. E #6: Plaintiff’s letter to DSHA requesting payment for the months of February through April 2018, signed and dated July 10, 2018.

Pl. E #4: Late Rent Notice for October 2018, signed and dated October 16, 2018.

Pl. E #5: Late Rent Notice for October and November 2018, signed and dated November 15, 2018.

Pl. E #6: Plaintiff's letter to DSHA requesting payment for the months of February through April 2018, signed and dated July 10, 2018.

Pl. E #7: Plaintiff's Events and Financial Log for Tenant, dated November 16, 2018.

The Defendant testified to previously having a lease agreement with the Plaintiff, but since her lease ended on January 31, 2018, she has been on a month-to-month lease agreement.

Furthermore, that the Plaintiff should not be charging her for the difference of the rent that DSHA was paying for in the past. She is willing to help the Plaintiff get the full amount of rent money from DSHA but that she disagrees with the Plaintiff's expectation for her to pay the additional \$633.00 that was DSHA's responsibility.

The Defendant then expressed being confused by the Plaintiff's accounting practices because it is unclear what rent amount is due. Due to the Plaintiff's inaccurate accounting, his late rent notices are wrong and she is unable to present them to social services in order to apply for financial assistance. The Defendant has asked the Plaintiff for a "current and correct" late notice but the Plaintiff has failed to do so. That, according to her bank account, she paid the Plaintiff \$467.00 on September 20th and then again on September 27th but it was not reflected on the October late rent notice. Additionally, the late rent notice for November 2018 also did not reflect the previous payments made and should only reflect that she is late for one month.⁹

The Defendant further stated that the 60-day notice to terminate the lease (sent on June 19, 2018) was premature by one day and that the Plaintiff did not allow her to cure NLT 20th of June 2018, as stated in the June late rent notice. The Defendant expressed her desire to keep possession of the unit and her intention to catch up on the rent due. She admitted to only owing October's rent of \$467.00 plus a \$67.00 balance. The Defendant did not submit exhibits at trial.

⁹ Pl. E #4: Late Rent Notice for October 2018, signed and dated October 16, 2018.

ANALYSIS

Burden of Proof: In order for a party to prevail in a civil action, they must establish their claim by a preponderance of the evidence.

Landlord/Tenant Relationship & Rent Amount Due:

The testimony of both Parties is that there is a landlord/tenant relationship between them and that upon the end of their lease agreement (on January 31, 2018) they entered into a month to month rental agreement.¹⁰ However, the parties have been in a dispute on what the rent amount should be. The Plaintiff's position is that he is owed \$1,100.00 per month in rent but the Defendant claims that she is only responsible for her portion of rent which is \$467.00 per month.

Considering that DSHA [as a Public Housing Authority (PHA)] has informed both parties that the voucher program is to be discontinued as of February 1, 2018, and pursuant to *HUD-52641, Part C, Tenancy Addendum, Section 5*, when the Defendant chose to stay in the unit, she became responsible for entire rent amount of \$1,100.00 per month.¹¹ The Court finds that, initially, the Defendant failed to pay the full amount of rent due to the Plaintiff.

However, the majority of late rent notices issued by the Plaintiff show the rent as only \$467.00 per month. Furthermore, the Plaintiff regularly accepted the rent of \$467.00 without any "reservation of rights",¹² and thus, through the "course of performance"¹³ the Plaintiff acquiesced¹⁴ and amended the rent agreement to \$467.00 per month. For this reason, the Court finds that there is a month-to-month verbal lease agreement with a rent of \$467.00 per month.

¹⁰ 25 Del C. § 5106 (a) **Rental agreement**; term and termination of rental agreement. (a) No rental agreement, unless in writing, shall be effective for a longer term than 1 year. (b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.

¹¹ U.S. Department of Housing and Urban Development, HUD-52641, Part C, Tenancy Addendum, 5 (a) **Family Payment to Owner**. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.

¹² 25 Del C. § 5502 (c) **Landlord remedies for failure to pay rent**. If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent. [emphasis added]

¹³ 6 Del C. § 1-201 (3) **General definitions** [Effective until Aug. 1, 2019] "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, [emphasis added] course of dealing, or usage of trade as provided in Section 1-303.

¹⁴ 6 Del C. § 1-303 (a) **Course of performance, course of dealing, and usage of trade**. (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if: (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection. [emphasis added]

60-Day Notice to Vacate:

The Defendant testified that the Plaintiff's 60-day notice was premature because the June 2018 late notice gave her until June 20, 2018 to cure, but she received the 60-day notice on June 19, 2018. Given the sequence of events presented by both Parties, the Court finds the 60-day notice (to vacate by August 31, 2018) to be independent of the June 2018 late notice. The June late notice was served as an action to correct the matter of late rent, and the 60-day notice was served as an action to terminate the lease. The two notices do not contradict one another and are independent actions.

Nonetheless, the Plaintiff later sent the October 2018 late notice which contradicted the 60-day notice in two ways. The first contradiction appears when the late notice expressed an opportunity to cure NLT October 24, 2018, but the 60-day notice informs the Defendant that she is to leave NLT August 31, 2018. The second contradiction appears when the late notice mentions an increase in monthly rent which attempts to amend the lease, but the 60-day notice informs the Defendant that the Plaintiff has elected to terminate the lease. The 60-day notice would have been effective if the Plaintiff had not presented the October 2018 late notice. For this reason, the Court finds the Plaintiff's 60-day notice to be invalid towards awarding the Plaintiff with possession of the property.

Late Notice / Demand Notice to Cure:

The Defendant's uncontested testimony is that on October 2018, the Plaintiff sent her a late notice demanding a sudden rent increase of \$1,100.00 instead of the precedented \$467.00 per month. Pursuant to 25 Del. C. § 5107(a) the Plaintiff was required to inform the Defendant in writing 60-days in advance, and not casually within the October 2018 late notice.¹⁵ For this reason, the Court finds the October 2018 and November 2018 late notices to be overstated and therefore, ineffective towards awarding the Plaintiff with possession of the property.

¹⁵ 25 Del. C. § 5107(a) **Renewals of rental agreements with modifications.** If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of 60 days' written notice prior to the expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including, but not limited to, amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit and the date on which any modifications or amendments shall take effect. [emphasis added]

Amount of Money Owed:

The Plaintiff testified that the amount owed for past due rent is \$4,755.40. However, the Plaintiff's financial log appears convoluted and is not in a "debits and credits" format.¹⁶ The Plaintiff explained that he has applied payments for September while May, July, August and October rents remain outstanding. However, the Plaintiff's late rent notice for November 2018 only itemized late rent due for October and November 2018 and failed to list any additional money owed.¹⁷ For this reason, the Court finds the Plaintiff has proven that the Defendant only owes rent for October and November ($\$467.00/\text{month} \times 2 = \934.00), and 14 days in December ($\$15.06/\text{day} \times 14 = \210.84); a total of \$1,144.84.¹⁸

CONCLUSION

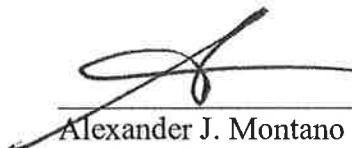
After considering the evidence and testimony presented, the Court finds Plaintiff has proven his case by a preponderance of the evidence in-part. The Court issues a unanimous decision in favor of the Plaintiff in-part and against the Defendant as follows:

Judgment in the Amount of \$1,144.84 (Rent for October and November ($\$467.00/\text{month} \times 2 = \934.00) + 14 days in December ($\$15.06/\text{day} \times 14 = \210.84) = Total \$1,144.84)

Court Costs of \$40.00.

Post Judgment Interest @ 7.75%.

IT IS SO ORDERED this 14th day of December, 2018.



Alexander J. Montano
Justice of the Peace
FOR THE COURT (SEAL)

¹⁶ Pl. E #7: Plaintiff's Events and Financial Log for Tenant, dated November 16, 2018.

¹⁷ "(2). Notice must state specific amount of rent due. (This amount must be itemized so that the tenant may understand how the landlord determined to amount of rent being demanded)." *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, Arndt, J., Murray, J., Pennella, J. (September 2, 2008) (Trial De Novo)

¹⁸ NOTE: **Possession remains with the Defendant.** If the Defendant chooses to remain in the unit, the Defendant is obligated to pay monthly rent in adherence with the current month-to-month lease agreement. Additionally, due to the per diem rent in December, Defendant is expected to pay the remaining of the per diem days to the end of the December. Monthly rent will resume on January 1, 2019.